

Message Text

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PAGE 01 STATE 310459
ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

DRAFTED BY IO/UNP:RAPECK/CBQ

APPROVED BY IO:GBHELMAN

L:JMICHEL

NEA/IAI:AHOUGHTON

IO/UNP:TNILES

AF:RMMOOSE

S/S-O:TMARTIN

-----044212 302205Z /73

P 302113Z DEC 77

FM SECSTATE WASHDC

TO AMEMBASSY TEL AVIV PRIORITY

USMISSION USUN NEW YORK PRIORITY

S E C R E T STATE 310459

EXDIS

E.O. 11652:GDS

TAGS: PCAT UNSC, IS, UN

SUBJECT: ISRAELI COMPLIANCE WITH SC ARMS EMBARGO ON
SOUTH AFRICA

1. AT OUR REQUEST, ISRAELI EMBASSY MINISTER COUNSELOR
BAR-ON MET WITH IO ACTING ASSISTANT SECRETARY HELMAN
DECEMBER 29 TO DISCUSS ISRAELI COMPLIANCE WITH THE
SECURITY COUNCIL ARMS EMBARGO ON SOUTH AFRICA. LEGAL
ADVISER HANSELL PARTICIPATED, ALONG WITH DEPUTY LEGAL
ADVISER MICHEL.

2. HELMAN NOTED THAT WE HAD ON A NUMBER OF OCCASIONS
EXPLAINED TO THE ISRAELI FOREIGN MINISTRY OUR VIEW OF
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THE SIGNIFICANCE AND INTERPRETATION OF SC RESOLUTION
418. THE UNITED STATES BELIEVES THIS RESOLUTION PROHIBITS
ANY FURTHER DELIVERIES OF ARMS OR RELATED MATERIAL TO
SOUTH AFRICA, EVEN UNDER EXISTING CONTRACTS. THIS
INTERPRETATION IS SHARED BY THE UNITED NATIONS LEGAL
COUNSEL AND BY ALL MEMBERS OF THE SECURITY COUNCIL.
ACCORDINGLY WE ARE CONCERNED AT INDICATIONS THAT

ISRAEL DOES NOT SHARE THIS INTERPRETATION.

3. IN HIS REPLY, BAR-ON SPOKE FROM A DOCUMENT HE INDICATED HAD BEEN PREPARED AT DAYAN'S REQUEST BY

THE FOREIGN MINISTRY'S LEGAL DIVISION. (HE DECLINED TO LEAVE A COPY.) BAR-ON SAID ISRAEL CERTAINLY SHARES OUR INTERPRETATION AS REGARDS NEW ARMS AGREEMENTS, BUT BELIEVES THAT THE RESOLUTION IS NOT MEANT TO COVER EXISTING ARRANGEMENTS. IN SUPPORT OF THIS POSITION, HE CITED A NUMBER OF POINTS:

-- PARAGRAPH TWO OF THE RESOLUTION DOES NOT STAND ALONE, BUT SHOULD BE READ TOGETHER WITH PARAGRAPH THREE, WHICH ONLY CALLS FOR THE REVIEW OF EXISTING ARRANGEMENTS. IN THIS REGARD, ISRAEL READS THE WORDS "PROVISION...INCLUDING THE SALE OR TRANSFER" IN PARAGRAPH TWO AS NOT INCLUDING DELIVERY OF GOODS ALREADY "SOLD" AND DOES NOT READ THE CLAUSE "RELATING TO THE MANUFACTURE AND MAINTENANCE OF ARMS..." IN PARAGRAPH THREE AS MODIFYING "ALL EXISTING CONTRACTUAL ARRANGEMENTS".

-- RESOLUTION 418 MUST BE READ IN LIGHT OF EARLIER DRAFTS WHICH WERE REJECTED BY THE COUNCIL AND WHICH CONTAINED MORE SPECIFIC PROVISIONS IN THIS REGARD.

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-- ONE MUST ALSO REFER BACK TO EARLIER PRECEDENTS. THE EMBARGO IMPOSED BY THE LEAGUE OF NATIONS ON ITALY IN 1935 WAS VERY EXPLICIT ON THE SUBJECT OF EXISTING CONTRACTS. EVEN IN THE RHODESIAN CASE, THE SECURITY COUNCIL HAD EMPLOYED MORE EXPLICIT LANGUAGE REGARDING EXISTING CONTRACTS THAN DID RESOLUTION 418. ISRAEL BELIEVES THAT, IF IT WAS THE INTENTION OF THE FRAMERS OF RESOLUTION 418 TO INCLUDE EXISTING CONTRACTS, THEY WOULD HAVE FOLLOWED THESE PRECEDENTS.

-- A CARDINAL PRINCIPLE OF INTERNATIONAL LEGAL INTERPRETATION IS THAT ANY INTERNATIONAL CONSTRAINT WHICH INFRINGES ON THE SOVEREIGNTY OF COUNTRIES, ESPECIALLY AS APPLYING TO FREEDOM OF TRADE, SHOULD BE INTERPRETED RESTRICTIVELY. THE QUESTION OF SANCTIONS OR EMBARGOES IS A PARTICULARLY SERIOUS MATTER. THIS GENERAL POINT OF VIEW SUPPORTS ISRAEL'S SPECIFIC ANALYSIS OF THE RESOLUTION.

4. IN REPLY, MICHEL NOTED THAT USG READ THE REFERENCE TO "EXISTING CONTRACTUAL ARRANGEMENTS" IN PARAGRAPH

THREE AS LIMITED TO CONTRACTS RELATING TO THE
"MANUFACTURE AND MAINTENANCE OF ARMS" (IN SOUTH
AFRICA). WE READ THIS AS MEANING THAT MANUFACTURING
OR MAINTENANCE ARRANGEMENTS WHICH MAY HAVE BEEN IN
EXISTENCE AT THE TIME OF THE ADOPTION OF THE RESOLUTION

COULD BE CONTINUED IN FORCE, BUT ONLY IF THIS COULD BE
DONE WITHOUT THE FURTHER DELIVERY OF MATERIAL OR
EQUIPMENT WHICH WOULD CONTRAVENE PARAGRAPH TWO. HE
EMPHASIZED THE IMPORTANCE OF STATE PRACTICE IN
IMPLEMENTING THE RESOLUTION AS A GUIDE TO ITS
CORRECT INTERPRETATION.

5. HELMAN ADDED ON THIS POINT THAT ALL SECURITY
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COUNCIL MEMBERS SHARED OUR INTERPRETATION AND FROM
THIS IT WAS REASONABLE TO CONCLUDE THAT THEY HAD THIS
IN MIND IN DRAFTING THE RESOLUTION. HE POINTED
SPECIFICALLY TO FRANCE WHICH WAS IN A SITUATION SIMILAR
TO THAT OF ISRAEL AND HAD DECIDED NOT TO DELIVER
EQUIPMENT UNDER EXISTING CONTRACTS. WE HAD SURVEYED
THOSE COUNTRIES WHICH HAD PREVIOUSLY SUPPLIED ARMS TO
SOUTH AFRICA AND, WITH THE EXCEPTION OF ISRAEL, THEY
ALL SHARED THIS INTERPRETATION.

6. HELMAN SAID THAT THE POLITICAL CONSEQUENCES SHOULD
ALSO BE CONSIDERED. IF IT SHOULD BECOME KNOWN THAT
ISRAEL HAD DELIVERED ARMS TO SOUTH AFRICA SUBSEQUENT
TO ADOPTION OF THIS RESOLUTION, WE COULD ANTICIPATE
THAT THE AFRICANS, SUPPORTED BY THE SOVIET UNION,
WOULD SEEK ACTION BY THE SECURITY COUNCIL. THIS COULD
WELL BE UNDER CIRCUMSTANCES IN WHICH ISRAEL'S FRIENDS
WOULD BE IN DISAGREEMENT WITH ISRAEL REGARDING THE
APPLICATION OF THE ARMS EMBARGO TO EXISTING CONTRACTS.
HELMAN ALSO GAVE BAR-ON A "NON-PAPER" SUMMARIZING OUR
VIEWS AS FOLLOWS:

"IF THE GOVERNMENT OF ISRAEL WERE TO MAKE FURTHER
DELIVERIES OF ARMS OR RELATED MATERIAL UNDER EXISTING
CONTRACTS WITH SOUTH AFRICA, ISRAEL WOULD BE IN
VIOLATION OF SECURITY COUNCIL RESOLUTION 418. SUCH
ACTION WOULD CONSTITUTE A VIOLATION OF ISRAEL'S LEGAL
OBLIGATION TO OBSERVE THE MANDATORY DECISIONS OF THE
SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE UN
CHARTER.

"THE SECURITY COUNCIL ARMS EMBARGO AGAINST SOUTH
AFRICA UNAMBIGUOUSLY APPLIES TO DELIVERIES UNDER
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PREVIOUS CONTRACTS AS WELL AS TO NEW SALES. THIS VIEW IS SHARED BY THE UNITED STATES, BY THE UNITED NATIONS LEGAL COUNSEL, AND BY ALL MEMBERS OF THE SECURITY COUNCIL. THAT EXISTING CONTRACTS ARE COVERED BY SECURITY COUNCIL RESOLUTION 418 WAS UNDERSTOOD BY ALL SECURITY COUNCIL MEMBERS WHEN THE RESOLUTION WAS ADOPTED.

"A CAREFUL REVIEW OF THE EXPRESSED INTENTIONS AND ACTIONS OF OTHER GOVERNMENTS WHO HAVE IN THE PAST SUPPLIED ARMS AND MILITARY EQUIPMENT TO SOUTH AFRICA REVEALS THAT NO GOVERNMENT, OTHER THAN THAT OF ISRAEL, IS CONSIDERING THE FURTHER SUPPLY OF ARMS TO SOUTH AFRICA. THIS INCLUDES GOVERNMENTS SUCH AS FRANCE WHICH HAD IMPORTANT ARMS CONTRACTS WITH SOUTH AFRICA AT THE TIME THE EMBARGO WAS ADOPTED. IT IS WORTH NOTING THAT OF THE REPLIES TO THE SECRETARY GENERAL'S LETTER REGARDING SECURITY COUNCIL RESOLUTION 418, ONLY THOSE OF ISRAEL AND BOLIVIA, WHICH SAID IT WAS STUDYING THE MATTER, WERE NOT CATEGORICAL ASSURANCES OF COMPLIANCE.

"THE AFRICAN REACTION AT THE UNITED NATIONS TO ANY EVIDENCE THAT ISRAEL IS NOT IN STRICT COMPLIANCE WITH THE ARMS EMBARGO WOULD BE SERIOUS. IT COULD WELL INVOLVE PROPOSALS FOR ACTION BY THE SECURITY COUNCIL UNDER CIRCUMSTANCES WHERE ISRAEL'S FRIENDS WOULD BE IN TOTAL DISAGREEMENT WITH ISRAEL ON A MOST SIGNIFICANT POINT -- THAT THE ARMS EMBARGO APPLIES TO EXISTING CONTRACTS."

7. HANSELL OFFERED TO EXAMINE FURTHER THE LEGAL POINTS MADE BY BAR-ON. FYI: L IS PREPARING A LEGAL MEMORANDUM ON THIS SUBJECT, WHICH WILL BE POUCHED TO EMBASSY AND MISSION WHEN IT IS AVAILABLE. END FYI.

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8. FOR TEL AVIV: YOU MAY WISH TO DRAW ON ABOVE IN DISCUSSIONS WITH ISRAELIS ON THIS SUBJECT.

9. FOR USUN: YOU MAY WANT TO FIND AN EARLY OCCASION TO REVIEW THIS ISSUE WITH HERZOG AND ELIAV. WE ASSUME THEY WILL BE ESPECIALLY SENSITIVE TO THE PRESSURES ISRAEL WOULD FACE IN THE SECURITY COUNCIL

IN THE EVENT THAT ISRAEL IS DISCOVERED TO BE VIOLATING
SANCTIONS ON ARMS SALES TO SOUTH AFRICA AND
PARTICULARLY IF ISRAEL IS THE ONLY SUCH VIOLATER.

MISSION MIGHT ENLARGE ON THE POINT BY NOTING THAT
THE ISRAELI MISSION IS BEGINNING TO SEEK SOME OF THE
BENEFITS FLOWING FROM FAVORABLE DEVELOPMENTS IN THE
MIDDLE EAST PEACE PROSPECTS. ISRAEL'S INTEREST IN
JOINING THE OUTER SPACE COMMITTEE, FOR EXAMPLE,
PRESAGES AN ISRAELI DESIRE TO PARTICIPATE NORMALLY
IN THE UN'S ACTIVITIES. WE SUPPORT THIS STRONGLY
AND BELIEVE IT IS IN ISRAEL'S LONGER-TERM INTEREST
WHICH, HOWEVER, COULD BE DAMAGED BY ISRAELI ACTIONS

WHICH WILL CERTAINLY BE UNIVERSALLY INTERPRETED AS
FLAUNTING INTERNATIONALLY BINDING CHAPTER VII
SANCTIONS AGAINST SOUTH AFRICA. MISSION MIGHT FURTHER
ADD, IN DISCUSSING MATTER WITH ISRAELI COUNTERPARTS,
THAT ISRAEL'S PROSPECTS FOR MORE NORMAL PARTICIPATION
IN UN ACTIVITIES ALSO CAN BE SIGNIFICANTLY IMPROVED
IF ISRAELI COMMENTS ON UN ACTIVITIES ARE TONED DOWN
SOMEWHAT. WHILE IN MANY RESPECTS JUSTIFIED, BECAUSE
OF TOTALLY UNFAIR TREATMENT THAT ISRAEL HAS RECEIVED
AT THE HANDS PARTICULARLY OF THE GENERAL ASSEMBLY,
SUCH PUBLIC AND PRIVATE COMMENTS BY PRINCIPAL ISRAELI
MISSION OFFICERS, INCLUDING AMBASSADOR HERZOG, DO
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SERVE TO ANTAGONIZE OTHER UN PERMREPS. WE DO NOT
COUNSEL ISRAELIS TO CUT BACK ON THEIR CRITICISM
BUT TO CONSIDER CAREFULLY ITS TONE AND PURPOSE.

CHRISTOPHER

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARMS, ARMS EMBARGO
Control Number: n/a
Copy: SINGLE
Sent Date: 30-Dec-1977 12:00:00 am
Decaption Date: 22 May 2009
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE310459
Document Source: CORE
Document Unique ID: 00
Drafter: RAPECK/CBQ
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780003-0715
Format: TEL
From: STATE
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t1977122/aaaaabru.tel
Line Count: 261
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b47b0efd-c188-dd11-92da-001cc4696bcc
Office: ORIGIN SS
Original Classification: SECRET
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: EXDIS
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 23-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 135393
Secure: OPEN
Status: NATIVE
Subject: ISRAELI COMPLIANCE WITH SC ARMS EMBARGO ON SOUTH AFRICA
TAGS: PCAT, IS, UNSC, UN
To: TEL AVIV USUN NEW YORK
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/b47b0efd-c188-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009